United States Postal Service *and* Stamford, Connecticut Area Local 240, American Postal Workers Union, AFL–CIO. Case 34–CA–5148(P)

February 8, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On March 23 and July 10, 1992, Administrative Law Judge Lowell M. Goerlich issued the attached decision and supplemental decision. The Respondent filed exceptions and supporting briefs to each decision. The General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decisions and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

We agree with the judge that the Respondent unlawfully refused to furnish the Union with information relating to the timecards of Supervisors Jocelin Domond and Betty Ford. On March 16, 1991,[2] the Respondent issued a warning to employee David W. Henderson and a notice of suspension to employee Gloria M. Hunter for attendance irregularities during the previous 26 weeks. Michael R. DeRita Jr., Local 240's vice president and a shop steward, filed grievances over the actions. On March 20, DeRita filed requests with Postmaster Victor Mann for certain information pertaining to the grievances. The information requested included the timecards of Supervisors Domond and Ford for the past 6 months.

In the supplemental decision the judge credited the testimony of DeRita and found that he told Mann he needed the supervisors' timecards ''because on many occasions I have seen the supervisors coming in late, and they're writing their time in for the correct punch in time'' and that he wanted the timecards ''to prove there is disparate treatment between the employees and the managers.'' Mann granted the requests for some of the information but denied the requests for the supervisors' timecards on the stated grounds that they were ''not part of the craft agreement,'' i.e., that they were not unit employees.

At the hearing, DeRita testified that he personally observed Supervisors Domond and Ford arrive late at least five times during March and that he saw Domond arrive late three times during the first 3 months of 1991. He testified that, from his observation of their timecards during the week of March 18, Ford had arrived late three times that week and both had entered incorrect starting times. DeRita also testified that other employees, of which he named five, had reported to him that they had observed Domond and Ford arriving late and that there were times when Domond had not been there to open the facility for employees.

We reject the Respondent's contention that the record fails to establish that Local 240 is a labor organization within the meaning of Section 2(5) of the Act. The evidence shows that employees participate in Local 240 and that Local 240 has filed and processed grievances on behalf of employees and has requested and been furnished with information needed to represent its members.

The evidence also establishes that DeRita is an agent of APWU,[3] the exclusive bargaining representative, at least for the purposes of processing grievances and requesting information. Postmaster Mann testified that, pursuant to article 17 of the applicable bargaining agreement, DeRita was certified by the APWU to process grievances. Further, as APWU does not regularly have a representative in the area, the parties have relied on Local 240 to administer the contract on a day-to-day basis. Article 31, section 13, of the applicable bargaining agreement states, ''Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or his designee.'' In addition, APWU, as exclusive representative, is empowered to designate and authorize agents, including other labor organizations, to act on its behalf. Accordingly, we find that DeRita is an agent authorized to request and receive information from the Respondent on behalf of APWU and Local 240.

Requests for information relating to persons outside the bargaining unit require a special demonstration of relevance. Thus, the requesting party must show that there is a logical foundation and a factual basis for its information request. The standard to be applied in determining the relevance of information relating to nonunit employees is, however, a liberal ''discovery type standard.'' *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). And in applying this standard, the Board need find only a probability that the re-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The General Counsel has moved to strike the documents appended to the Respondent's briefs in support of exceptions. These documents were not introduced as evidence at the hearing and are not part of the record as defined by Sec. 102.45(b) of the Board's Rules and Regulations. Accordingly, they are stricken.

[2] All relevant events occurred in 1991.

[3] American Postal Workers Union, AFL–CIO.

quested information is relevant and would be of use to the union in carrying out its statutory responsibilities.

The logical foundation is fully set forth in the judge's decision. Both unit employees and supervisors are subject to the Respondent's employee and labor relations manual and in particular to the attendance and tardiness rules. Both are also subject to the time and attendance handbook governing clock-in procedures. The judge also found that DeRita explained that he would have used the cards to show that ''supervisors aren't being disciplined like the craft employees, that they were being treated differently.'' Because supervisors and employees were subject to the same time and attendance rules, information that supervisors were tardy arguably could show disparate treatment which would be of use to the Union in processing the employees' grievances.

We also find that the Union had a factual basis for the information. DeRita personally saw Supervisors Domond and Ford arrive late on several occasions within a relatively short time period. He also received reports from fellow employees that Domond and Ford had arrived late. Significantly, DeRita limited his request for supervisors' timecards to the two supervisors he and others had observed arriving late and for essentially the same 6-month period that the Respondent cited in the disciplinary notices to the two employees. We, thus, find that DeRita had more than a mere suspicion to support his requests for Domond's and Ford's timecards and that the Union has met its burden of showing probable relevance.[4]

The Respondent argues that, regardless of the relevancy of the information, the Postal Service is not obligated to furnish the information because to do so would undermine the Postal Reorganization Act, the information is confidential, and the information is protected by the Privacy Act. These same arguments have repeatedly been rejected by the Board and the courts.[5] We also reject them here. In addition, the Respondent in its brief quotes one of the routine-use exceptions to the Privacy Act as stating that records ''may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative.'' Contrary to the Respondent's assertions, we find that the quoted language supports our finding that the Privacy Act permits the disclosure of relevant information.

For the foregoing reasons we conclude that the Union has met its burden of showing a sufficient probability that the information sought is relevant and would be of use to it in carrying out its responsibility to process employee grievances. To hold otherwise would be inconsistent with the liberal discovery type standard for such information. Accordingly, we agree with the judge that the Respondent's refusal to furnish the information violated Section 8(a)(5) and (1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United States Postal Service, Greenwich, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Thomas E. Quigley, Esq., for the General Counsel.
Peter W. Gallaudet, Esq., of Windsor, Connecticut, for the Respondent.
Michael R. DeRita Jr., of Greenwich, Connecticut, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LOWELL GOERLICH, Administrative Law Judge. The charge filed by Stamford, Connecticut Area Local 240, American Postal Workers Union, AFL–CIO (the Union) on March 25, 1991, was served on the United States Postal Service (the Respondent) by certified mail on March 25, 1991. A complaint and notice of hearing was issued on May 9, 1991. Among other things it is alleged in the complaint that the Respondent failed and refused to furnish the timecards for Jocelin Domond and Betty Ford thus violating Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

The Respondent filed a timely answer denying that it had engaged in the unfair practices alleged.

The matter came on for hearing on December 4 and 5, 1991, at Hartford, Connecticut. Each party was afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.

On the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT, CONCLUSIONS AND REASONS THEREFOR

The Respondent provides postal services for the United States of America and operates various facilities throughout the United States in the performance of that function, including its facility in Greenwich, Connecticut (the Greenwich facility).

[4] There was testimony at the hearing that Supervisor Ford was not tardy but, at least on occasion, had arrived at the facility late because she was working elsewhere. Such matters, however, are ones for the Union to weigh after receipt of the information and for discussion in grievance meetings or, if necessary, for an arbitrator to decide. In addition, probable, not final, relevance is all that the Union is required to establish.

[5] Most recently the arguments were rejected in *Postal Service*, 309 NLRB 309 (1992); *Postal Service*, 307 NLRB 429 (1992); *Postal Service*, 301 NLRB 709 (1991), enfd. by unpublished memorandum (3d Cir. 1992); *NLRB v. Postal Service*, 888 F.2d 1568 (11th Cir. 1989), enfg. 289 NLRB 942 (1988).

The Board has jurisdiction over the Respondent in this matter by virtue of the Postal Reorganization Act 39 U.S.C. § 1209(a) (PRA).

I. THE LABOR ORGANIZATIONS INVOLVED

Local 240 is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.[1]

American Postal Workers Union, AFL–CIO (APWU) is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

First: On March 16, 1991, the Respondent addressed a letter of warning to David W. Henderson, an employee at the Greenwich, Connecticut postal facility, charging him with failure to be regular in attendance and habitual tardiness. Among other things, the letter warned, ''a recurrence of this infraction in the future will result in disciplinary action taken against you, up to and including removal from the Postal Service.''

Also on March 16, 1991, the Respondent addressed a notice of suspension to Gloria M. Hunter, also an employee of Greenwich, Connecticut postal facility, charging ''Failure to meet the requirements of your position—Habitually Tardy–USL.'' Among other things, the notice stated ''Employee and Labor Relations Manual, Section 666.81[2] requires that all employees be regular in attendance. Your inability to report to work on time and your not being available for duty when needed as schedule indicates, you are unable to meet the requirements.'' The Union filed grievances protesting each disciplinary action. Thereafter the Union requested information and documents relative to processing the grievances by a letter dated March 20, 1991. Among the documents requested were the timecards for Supervisors Jocelin Domond and Betty Ford. The Respondent refused to furnish the supervisors' timecards, answering, ''Supervisors J. Domond; B. Ford not part of craft agreement therefore, your request for those (2) two individuals is denied.''

According to the testimony of Steward Michael R. DeRita Jr., which is not contradicted, he told Postmaster Victor Mann, ''I explained to him the reason why I wanted the time cards, because on many occasions I have seen the supervisors coming in late, and they're writing their time in for their correct punch in time. . . . That's the reason why I wanted the time cards, to prove that there is disparate treatment between the employees and the managers.''

DeRita explained that he had observed and other employees had reported to him that Domond and Ford had arrived late on a number of occasions.[3]

Employee and Labor Relations Manual 666.81[4] cited in Ford's suspension noted above reads ''Requirement for Attendance. Employees are required to be regular in attendance.'' Section 666.83 provides, ''Tardiness. Any employee failing to report by the scheduled time when time recorders are not used is considered tardy. Tardiness in units or installations equipped with time recorders is defined as being any deviation from schedule.''

Section 666.86 reads ''Disciplinary Action. Postal Officials will take appropriate disciplinary measures to correct violations of these requirements.''[5]

Section 665.2 of the ELM provides '' [t]he following statutes and *regulations* are applicable to *all* employees in the Postal Service.'' (Emphasis added.)

Under a document entitled ''Time and Attendance'' (Handbook F-21), these provisions are set forth:

> 141.1 Employees Who Are Required to Use a Time Clock
>
> .11 The following employees will be required to use time clocks (if time clocks are available) to record time on their timecards.
>
> a. All bargaining unit employees except for rural carriers.
>
> b. All non-bargaining unit, non-supervisory employees in grades EAS-23 and below at post offices and field installations, as well as any supervisory employees in grade EAS-10 or below.
>
> .12 If time clocks are not available, these employees should ''write in'' their time each day in blue or black ink in the clock ring spaces on the timecard as shown on Exhibit 141.12.

When asked how he would have utilized the requested information DeRita replied, ''I would have showed that the supervisors aren't being disciplined like the craft employees, that they are being treated differently.''

Second: The Respondent concedes, ''Employees in addition to being covered by the terms and conditions of employment of the National Agreement are also covered by the terms and conditions that are set forth in the Postal Service handbook and manuals. Specifically, those provisions of the ELM that relate to employee's terms and conditions of employment are incorporated into the National Agreement.'' (R. Br. p. 8.) ELM also applies to supervisors on the level of Domond and Ford. Thus, if supervisor and craft employees were treated differently under the same rules arguably disparate treatment would have resulted. Moreover, it is undisputed that the Respondent's restrictions on tardiness and absences apply equally to supervisors and craft employees.

In the case of United States Court of Appeals for the Sixth Circuit, the court said in *NLRB v. Postal Service*, 841 F.2d 141, 144 (1988):

> Generally, an employer's duty to bargain collectively established in § 8(a)(5) of the National Labor Relations Act, obligates it to provide a labor union with relevant information necessary for the proper performance of the union's duties as the employees' bargaining representative. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303, 99 S.Ct. 1123, 1125 . . . (1979); *NLRB v. Acme Indus. Co.*, 385 U.S. 432, 87 S.Ct. 565 . . . (1967); *NLRB v.*

[1] See *Postal Service*, 302 NLRB 767 (1991).

[2] Sec. 666.81 reads ''Employees are required to be regular in attendance.''

[3] DeRita testified that ''they were writing in their times started at 2:00 a.m. when they were coming in at 2:30/2:45.''

[4] This section appears under the general heading, ''USPS Standards of Conduct.''

[5] The Respondent conceded that the Employee and Labor Relations Manual (ELM) ''is a manual utilized by the Postal Service and drafted by the Postal Service, and that we're bound by the provisions in it.''

> *Truitt Mfg. Co.*, 351 U.S. 149, 76 S.Ct. 733 . . . (1956). The failure to provide such information constitutes an unfair labor practice in violation of § 8(a)(1) and (5) of the Act, 29 U.S.C. § 158(a)(1), (5).

The Board has stated in *Postal Service*, 289 NLRB 942 (1988) ''[t]he standard for determining the relevancy of requested information is a liberal discovery-type standard that merely requires that the information have some bearing on the issue between the parties.''[6]

The issue here is whether the Respondent has rendered harsher penalties to craft employees than to supervisors for the same offenses, tardiness, and absenteeism. If such disparate treatment was found to be true, arguably the penalties imposed on the craft employees could be lessened or rescinded. The supervisor's timecards, which reveal the tardiness and absentee records of the supervisors is relevant to this issue. As aptly stated by DeRita: ''I needed the time cards to show they [the supervisors] were writing in their times illegally, and they were not being treated like all the other employees.''

The Respondent has raised various objections to surrendering this type of seemingly relevant information to the Union. These same objections were considered by the Board in *Postal Service*, supra, and overruled. Although the Respondent asserts that *Postal Service* may be distinguished from the instant case, I find that the case is controlling in the matter before me and disposes of all issues. Accordingly, I find that the requested information is necessary relevant information for the processing of the Union's grievance. *Postal Service*, supra.

I cannot find that the Union's claim is not arguably well taken nor does it lack a reasonable basis in fact or law. It is neither sham nor frivolous. The information requested is of a routine nature.

CONCLUSIONS OF LAW

1. The Respondent is an employer subject to the terms of 1209 of the PRA, and it will effectuate the purposes of the Act for jurisdiction to be exercised herein.

2. The Unions are labor organizations within the meaning of the Act.

3. Since at least July 11, 1971, Respondent and the APWU have entered into several successive collective-bargaining agreements. The most recent collective-bargaining agreement between the Respondent and the APWU, which is effective by its terms from July 21, 1987, through November 30, 1990, provides, inter alia, for the recognition of the APWU as the exclusive representative of the Respondent's employees in a unit described in article 1.

4. The unit of employees referred to above (the unit) constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. In or about 1971, APWU was recognized as the exclusive collective-bargaining representative of the unit.

6. At all times since 1971, APWU, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. In accordance with article 30 of the national agreement, Local 240 may meet and discuss with the Postal Service specific items set forth in that article for the purpose of entering into a local memorandum of understanding, provided that the memorandum is not inconsistent with or does not vary the terms of the national agreement.[7]

7. By refusing to bargain collectively with the Union by refusing to furnish the Union with the information it requested on March 20, 1991, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, United States Postal Service, Greenwich, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to supply information concerning matters requested by the Union in its letter dated March 20, 1991, which relates to the timecards of Supervisors Jocelin Domond and Betty Ford.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Supply the Union the information concerning matters requested in the Union's letter dated March 20, 1991, which relates to the timecards of Supervisors Jocelin Domond and Betty Ford.

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[6] In the case of *Hawkins Construction Co.*, 285 NLRB 1313, 1315 (1987), the Board said:

> The Board and the courts employ a liberal, discovery-type standard for determining what constitutes relevant information. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967); *Bohemia, Inc.*, 272 NLRB 1128, 1129 (1984). This liberal standard is utilized both when the information requested relates directly to matters affecting the bargaining unit employees, and thus is considered presumptively relevant, or *when it relates to matters outside the bargaining unit. United Graphics*, 281 NLRB 463 (1986). In determining relevancy, it is sufficient that the Union demonstrate that there is a probability that the desired information is relevant and that it would be of use to the Union in carrying out its statutory duties and responsibilities. *NLRB v. Acme Industrial Co.*, supra at 437. [Emphasis added.]

[7] Admitted by the Respondent.

[8] If no exceptions are filed as provided by Sec,. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Post at its facility in Greenwich, Connecticut, copies of the attached notice marked ''Appendix.''[9] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to supply the Union with information requested in its letter dated March 20, 1991, which relates to the timecards of Jocelin Domond and Betty Ford.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL supply the Union the information that it requested in its letter dated March 20, 1991, which relates to the timecards of Jocelin Domond and Betty Ford.

UNITED STATES POSTAL SERVICE

Thomas E. Quigley, Esq., for the General Counsel.
Peter W. Gallaudet, Esq., of Windsor, Connecticut, for the Respondent.
Michael R. DeRita Jr., of Greenwich, Connecticut, for the Charging Party.

SUPPLEMENTAL DECISION

LOWELL M. GOERLICH, Administrative Law Judge. This case was remanded to the administrative law judge for the purpose of preparing and issuing a ''Supplemental Decision setting forth credibility resolutions and containing findings of fact, conclusions of law, and a recommended Order.''

The credibility resolutions relate to the following testimony of Steward Michael DeRita Jr., and Postmaster Victor Mann.

DeRita Jr., testified:

> I explained to him [Mann] the reason why I wanted the time cards, because on many occasions I have seen the supervisors coming in late, and they're writing their time in for their correct punch in time.
>
> That's the reason why I wanted the time cards, to prove that there is disparate treatment between the employees and the managers.

Mann testified:

> Q. Now at the time he requested this information, did Mr. DeRita ever explain to you why he wanted the time cards of any of these individuals?
>
> A. No, he did not.
>
> Q. Did he ever explain to you why he believed the time cards of Miss Ford were necessary for him to investigate the letter of discipline issued to Henderson or Hunter?
>
> A. No, he did not.
>
> Q. Now when you met with Mr. DeRita on the 20th of March, I believe you testified he never mentioned the reason for the information request.
>
> A. That's correct.

FINDINGS OF FACT

Having weighed the demeanor of DeRita Jr. and Mann, their attitude while testifying, and having reviewed the entire testimonial record and exhibits with due regard to the logic of probability, I am convinced and conclude that DeRita Jr., is the credible witness. I credit DeRita Jr., in respect to the testimony quoted above and discredit Mann.

Such additional finding does not disturb in any respect my decision in this case. The decision is incorporated herein by reference.

CONCLUSIONS OF LAW

1. The Respondent is an employer subject to the terms of section 1209 of the PRA, and it will effectuate the purposes of the Act for jurisdiction to be exercised herein.

2. The Unions are labor organizations within the meaning of the Act.

3. Since at least July 11, 1971, Respondent and the American Postal Workers Union, AFL–CIO (APWU) have entered into several successive collective-bargaining agreements. The most recent collective-bargaining agreement between the Respondent and the APWU, which is effective by its terms from July 21, 1987, through November 30, 1990, provides, inter alia, for the recognition of the APWU as the exclusive representative of the Respondent's employees in a unit described in article 1.

The unit of employees referred to above (the unit) constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

In or about 1971, APWU was recognized as the exclusive collective-bargaining representative of the unit.

At all times since 1971, APWU, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. In accordance with article 30 of the National Agreement, Local 240 may meet and discuss with Postal Service specific items set forth in that article for the purpose of entering into a local memorandum of under-

standing, provided that the memorandum is not inconsistent with or does not vary the terms of the national agreement.[1]

4. By refusing to bargain collectively with the Union by refusing to furnish the Union with information it requested on March 20, 1991, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) of the Act.

[Recommended Order omitted from publication.]

[1] Admitted by Respondent.